

THE CASE OF TENVRES

upon the Commission of De-
fective Titles,

*Argued by all the Judges of Ireland,
with their Resolution, and
the Reasons of their
Resolution.*



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Pickering & Chatto
14 Oct. 1902

TO THE RIGHT
HONOURABLE,

THOMAS Viscount WENTWORTH
Lord Deputy generall of
Ireland.

MY LORD,



*His work is Yours by more then one
Interest, and therefore it returnes
naturally unto you, for to lay aside
my particular respects, (it being by
Your Lordships favour that I serve his
Majesty in this place,) You are Pater
Patriæ, and not more by Your Office, then by
your love to this nation, and your most equall,
and indifferent dispensation of Iustice, (next
under his Majesty) the Father of this
Church, and Common-wealth; And for
whom can an oblation of this nature be more
proper? besides, all that is heere, as it was at first
spoken, in an humble obedience to Your Lord-
ships Order, so it was after upon a noble invi-
tation from You digested into this forme,
and it is now made publique by Your Comman-
dement;*

The Epistle Dedicatory.

dement ; so that in all the passages of it , it carries Your Image, Your Superscription, and therefore by this dedication, I doe not so much give it, as restore it. If there be any thing in it, that is mine , that answeres Your expectation, even in that , that it answeres Your expectation, I have my reward ; for all that are below Your Lordship, I hope it shall have this use, it shall satisfie them , that Your Lo: proceedings in this businesse have bin in all points agreeable both to Honour, and Iustice ; God leade Your Lordship by the hand , untill You have finished those great, and heroicall workes so happily begun, May they all prosper to the high pleasure of Almighty God, the encrease of Honour, and renew to his Majesty , of peace , and prosperity to this Kingdome, and to Your own immortall glory.

Your Lordships most
humble servant

James Barry.



*The Case of Tenures upon the Com-
mission of Defective Titles.*

Trin. 13. Caroli Regis.



AT the late enquire concerning His *Majesties* Title to the Countie of Mayo, there was an Act of State published, wherein it was declared, that it was not his *Majesties* intention, to take from his people any thing that was iustly theirs, and that therefore none, who held any Lands, or other Hereditaments whatsoever within that County, by Letters-patents from the Crowne, should be any wayes preiudiced by finding his *Majesties* Title, although their Letters-patents were not found, or well and certaynely found, in the great Office then intended to be taken, but that they should have the same benefit of them, as if they had beene specially found, so as they did produce their Letters-patents, or the enrollment thereof, before the Lord Deputy and Councell, at the Councell Board, by a certayne day limited in the Act; and that they were allowed by that Board, to be good and effectnall in Law.

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In pursuance of that Act, there were severall Letters-patents produced, and among the rest, the Lord-Viscount Dillon did shew forth Letters-patents, obtained from his late Maiestie, and passed upon the late Commission of Defective titles; Vpon perusall and consideration whereof, his Maiesties Councell were of opinion, that they were voyde in law; And therefore it was thought fit, and so ordered by the Lord Deputy and Councell, that the doubt arising upon the Letters-patents, should be drawne up into a Case, and that that Case should be openly argued at the Councell Board, by Councell learned on both sides.

The Case was after drawne up
in these words.

KING JAMES by Commission under the great Seale, dated the second day of March, in the fourth yeare of his raigne, did authorize certayne Commissioners, to grant the Mannor of Dale, by Letters patents under the great Seale of this Kingdome, to A. and his heires, and there is no direction given in the sayd Commission, touching the tenure to be reserved.

There are Letters-patents by colour of the sayd Commission passed unto A. and his heyres, to hold by Knights service, as of his Maiesties Castle of Dublin.

The question is, whether the sayd Letters-patents be voyde in the whole, or onely as to the tenure.

THIS Case was argued on severall dayes, first by Nicholas Plunket for the Lord Dillon, and Serjeant Catlin

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Catlin for the King, and after by *Iohn Pollexfen* for the Lord *Dillon*, and *Osbaldeston* Attorney generall for the King.

And because it was a Case of great weight and importance, it was delivered unto the *Iudges*, and they were required by the Lord Deputy and Councell, to conferre and consider of it, and to returne unto them their resolution concerning it, but they (upon private conference among themselves) did not agree in opinion, and therefore it was thought necessary, for publique satisfaction, that it should be argued solemnly by them all: and therevpon in *Trinity terme* last, the Case was argued by *Ryves* *Puisne* Iudge of his Majesties Court of Chiefe place, *Barry* second Baron of the Exchequer, and *Cressy* one of the Iudges of the Court of Chiefe place: and after on another day appointed for the Case, by *Mayart* one of the Iudges of the Common pleas, *Bolton* Chiefe Baron, *Louther* chiefe Iustice of the Common pleas, and *Shurly* chiefe Iustice of the Court of chiefe place.

And for that I intend to make as summary a Report as I can, I will first set downe such arguments, and obiections as were made by them that argued for the mayntenance of the Letters patents.

It was objected by them, That the Letters patents were good for the Land, and voyde onely as to the tenure.

For divers reasons

1. Regularly where a Man doth lesse then the authority or commandement committed unto him, there

there (the commandement or authority being not pursued) the Act is voyde; But where a Man doth that which hee is authorised to doe, and more, there it is good for that which is warranted, and voyde for the rest. *cokes instit. sect. 434. Perk. 189. vid. 8 coke. 85.* But in the Case in question, the Commissioners doe that, which they had authority to doe, and they doe more; therefore for that which they had authoritie to doe, that is, to grant the Landes, the Letters patents are good, for that which they doe more, that is, the reserving of a tenure they are voyde.

Their authority was, to grant the Mannor of Dale to *A.* and his heyres, that they have fully done, and if they had stayed there, no man will deny, but they had well executed their authoritie; but they goe further, and doe more, and Reserve a tenure, therefore for that more, for that Reservation, their Act is onely voyde.

2. *Where* a Man hath authority to doe an act, and hee doth it in substance, though hee differ in the manner, yet the authority is well executed. As if a Man make a deede of Feoffment of *Blacke-acre*, and *whit-acre*, and a letter of attourney to enter into both Acres, and to deliver *seisin* of both of them, according to the forme and effect of the deede; and hee entreth into *Blacke-acre*, and delivers *seisin secundum formam Cartæ*, this livery and *seisin* is good, albeit hee did not enter into both, nor into one in the name of both; and yet this is done in another manner, then his authoritie warrants; for his authority was, to enter into both, and to deliver *seisin* of both, neyther of which hee doth, no not so much as enter into one in the name

of

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of both.

So when the Feoffment is made to two, or more, and a letter of Atturney to make *Livery* to both, and the Atturney makes *Livery* of *seisin* to one of the feoffees, *secundum formam & effectum Carte*, this is good to both, and yet in that Case, hee that is absent may *vwayve* the *Livery*; Surely, this is done by the Atturney in another manner, then the authority warrants, for his warrant was to make *Livery* to both, and the intention of the Feoffor was, that both should take, and the estate bee settled in both, and yet hee makes *Livery* to one onely, and so, that the estate may bee settled onely in him, and yet hee hath well executed his authority, for in substance hee hath done that which is commanded, and though it differs in the manner, it is not materiall; both those Cases are put in *cokes instit. sect. 66.*

But in the Case in Question, the Commissioners have done in substance, that which was commanded them, therefore their authority is well executed, and the act they have done is good. That they have done in substance, that which was commanded them, appears in it selfe, for their authority was to grant the Mannor of *Dale* to *A.* and his heyres, this they have done: And if they have added any thing to the grant, whereby it may bee sayd to bee done in another manner, yet the act being done in substance, it shall bee good.

3. That wherein they have exceeded their authority, *scilicet*, the Reservation of the tenure, it is not of the essence of the grant, Of the essence of a grant

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are

are onely Grantor, Grantee, and the thing to bee granted, and apt words in an Instrument or Patent; Besides, of the essence of a grant it cannot bee, for grants were at Common-law, tenures were introduced by the Conquest. *Selden in his Not. to Eadmer. 194. Bracton libr. 2. de acquir. rerum domin.* The tenure is another distinct thing, *aliud* from the Land, in that they cannot consist in one person, the Land is the thing granted, that belongs to the Patentee, the tenure is Reserved to the King, that belongs to him, the Reservation is *aliud*, or *supra*, or *prater* the grant, not *alio modo*. And therefore the Letters patents may bee voyde for the tenure, and yet good for the grant of the Land.

4. Although it were admitted, that the Reservation of the tenure, bee not a distinct thing, or *aliud* from that, which they had authority to doe, but is rather a doing of the same thing, for which they had warrant, in another manner then their authority does warrant; yet it will not follow, that the whole act is voyde: For an authority given, may bee executed in another manner, *alio modo* then the Commission doth Warrant; and yet stand good, for that which is done according to the authority.

And that may be in these Cases.

1. Where the authority is cloathed with an interest, for there in many Cases, he that hath the authority may vary from the authority, And the act though it bee done in another manner, shall bee good. As
where

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where the custome of a Mannor is, that the Lord may grant Landes by copy of Court-roll in Fee, if the grant bee in taylor, or but for life, this is good, *Stanton and Barnes his Case Hill. 36. Eliz. Rot. 492. in B. R. cokes instit. sect. 66.*

So where the custome was, to grant Copyes for two lives, and hee grants to the Husband for life, and after to the Wife *Durante viduitate.* This is good. *Downes and Hopkins case P. 36. Eliz. B. R.* The Statute of 32. *Henr. 8.* doth enable tenant in taylor, to make a Lease for one and twenty yeares, if he makes a Lease for twenty yeares onely, or to one for tennie yeares, and after makes a Lease to another for eleven yeares more, this is good, and so it hath beene Resolved in *Tompson, and Traffords case, Hill. 35. Eliz. B. R.*

2. Where the varying from the authority given, is in letter, or circumstance, and not in a point materiall, or in substance, for that see the Cases cited before *Cokes instit. sect. 66. & Litt. 434.*

3. Where the variance from the authority, although it bee in matter of substance, is supplied by operation of law. As if a licence bee granted to a Copy-holder for life, to make a Lease for tenne yeares, if hee shall so long live, the Copy-holder makes a Lease for tenne yeares absolutely, without the limitation, *videlicet*, if hee shall so long live, yet adjudged good; and the Licence well pursued. It was *Hatt and Arrowsmiths case Hillar. 38. Elizabeth. B. R.*

And in the Case in question, where all agree, that
B 2 the

the Kings meaning in this Commission was, that a tenure in *capite* should bee Reserved, albeit it bee not expressed in words; or if it had beene in expresse termes, that a tenure in *capite* should bee reserved, and they had onely granted the Mannor, without reservation of any tenure, yet the Law supplying this defect, and raysing a tenure in *capite*, this shall make the grant good.

4. *Where* the varyance from the authority is cured by the party himselfe, by some other act, As if Tenant in *tayle*, Husband and Wife, a Bishop, &c. who are authorized by the Statute of 32. *Henr. 8.* to make leases for one & twenty yeares, or three lives of Landes usually lett, make a lease of Landes usually lett, and of Landes not usually lett, reserving one entire Rent, all is voyde: *Shepherds Case*; But if Tenant in *tayle* will make such a lease, and reserve the accustomed Rent for the Landes usually lett, and another Rent for the Landes not usually lett, heere the lease shall bee good for the Landes usually lett, and voydeable onely for the other; for by these severall reservations, the varyance from the authority is Cured. *Tanfeild and Rogers Case Trin. 36. Eliz. B. R.*

5. *Where* the varyance from the authority (how materiall soever it bee) is notwithstanding made voyde, cyther by the Common-law, or act of Parliament; As where the King does licence *I. S.* to grant twenty Markes annuity in *Mortmaine*, and hee grants the Annuity with clause of distresse, by *Hasssey*, and *Bryan* chiefe Iustices, and *Starky* chiefe Baron, and Iustice *Fairfax*, the addition of distresse is without warrant,

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warrant, and voyde; yet all admit the grant of the Rent good notwithstanding, 2. & 3. *H. 7. grants* 36.

By the Statute of 1. *Elizabeth.* a grant by a Bishop of an ancient Office of Seneschallship to two, that had never before beene granted, but to one, is adjudged voyde, 10. *Coke* 61. *the Bishop of Salisburys case*, Put case then that such a grant is made by a Bishop to I. S. and to an *Infant*, joyntly, or the one after the other, this is a materiall varyance, and yet, because the grant in respect of the *Infant* is voyde, (as it was held in *Scambler and VValters Case*, M. 40. & 41. *Eliz. B.R.* cited in *Cokes instit. sect. 1.* the grant to I. S. (as they held) is good.

5. Although the *habendum*, *tenendum*, *condition*, &c. be partes of a grant, yet the *Habendum* may be voyde, and the grant good; as in *Auditor Kings case* cited in 8. *Coke* 56. in the *Earle of Rutlands Case*; where the Case was, the King granted Landes to A. and his heyres, in the premises, *Habendum* to him, and his assignes, omitting the word *Heyres* in the *habendum*, yet the Fee shall passe by the premises, and the *habendum* shall be voyde.

The condition may bee voyde, as in *Littletons Case* a Feoffment upon condition that hee shall not alien, and yet the grant remayne good.

6. The reservation of a tenure was not necessary in the grant, if it were not necessary, it is *inutile*, and *utile per inutile, non vitiatur.* 3. *Coke* 10. *Dowties case.*

7. The honour of the King shall be preferred before his profit 9. *Coke* 131. in *Bewlyes case*: and therefore when the Kings grant may bee taken to two intents good,

good, in many Cases, it shall be taken to that intent, which is most beneficiall for the King; But if it may bee taken, to one intent good, and to another intent voyde, there for the honour of the King, and the benefit of the Subject, it shall be taken in such manner, that the grant of the King may take effect, for it was not the intent of the King, to make a voyde grant, *vid.* 8. *Coke.* 56. the Earle of Rutlands case, the Lord Staffords case, 8. *Coke.* 77. the Earle of Cumberlands case, 8. *Coke.* 167.

Vpon this rule the Case of *Priddle* and *Napper.* 11. *Coke.* 11. was put, which was sayd, to bee a farre stronger Case, then the Case in Question, and that, in Case of an authority executed in other manner, *alio modo*, and yet good: The point resolved, as to this purpose, was this, *King Henr.* 8. did grant Licence to the Prior and Covent of *Mountacute*, to appropriate the Church of *Tintinhul* to their Priory, and this was, *per verba de presenti tempore.*

It did appeare, that at the time of the licence, the Church was full of an Incumbent, and so that no appropriation could be made, *in presenti*, but *in futuro*, by speciall wordes, to take effect, after the death of the present Incumbent; and therefore the licence ought to have beene speciall, otherwise the King was deceived in his grant, and so the appropriation voyde, which by colour of that licence, they made to take effect, after the death of the Incumbent: But it was resolved, that the appropriation was sufficient in law, for the licence was generall, and therefore, it shall be taken in such sence, that it may take effect, that is to
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take effect, after the death of the Incumbent. And the reason there given, is the rule before remembred, for Construction of the Kings grants.

In which Case it is to be observed, first that the licence or authority given by the King vvas in general words, to make the appropriation presently. Secondly that this authority could not bee executed in that manner. Thirdly by vertue of that licence, they make the appropriation *in futuro*, S. to take effect after the death of the Incumbent; So they doe it in another manner, then their authority vvarrants, and yet good, and their authority vvell pursued.

Then if that authority executed in so different a manner, from the vvordes of the authority, vvas adjudged to be well executed, much more shall it in this Case be sayd to be vvell executed, vvhen they have pursued the very vvordes of the authority, and if to some intent there might be a construction made, to make the grant voyde, yet if by another construction, the grant may bee made good, and the Kings intention fulfilled, vvithout any prejudice to him, then for the honour of the King, and the benefit of the Subject, that Construction shall bee made, that the grant shall bee good, and such Construction may bee made in this Case, for heere the tenure reserved being voyde (as it is agreed by all) a tenure in *capite*, (being the tenure intended by the Commission) shall bee raysed by implication of law; by this Construction the grant shall bee made good, and the Kings intention shall bee fulfilled, vvithout any prejudice to him.

They

They agree, that in all grants of Lands by Letters patents heere in *Ireland*, by vertue of the Kings Commission, or letter Missive under the privy Signet, if that tenure be not reserved, eyther by the Letters patents, or by the law, which is directed by the sayd Commission, or letter Missive, there the grant shall bee voyde in the vvhole, both for the Land and tenure.

And therefore, where the king gives power, to grant Lands, and to reserve a tenure, which the law will not create, or to reserve some other thing, vvhich the law it selfe will not reserve; as if the Commission had beene, to grant landes, and to reserve a tenure by Knights service, if the land be granted, reserving a tenure in *socage*, the grant is voyde in the vvhole.

So if the Commission had beene, to grant land, and to reserve twenty shillings Rent, and they reserve tenne shillings; In these Cases the Commissioners have not done so much, as they should, the king is prejudiced, and no construction or implication of law can helpe, as in our Case it doth.

And heere in this Case, the tenure reserved shall not toll that tenure, which is implied by the law, because the tenure reserved is voyde: For that they cited the Case of *Littleton*, in his Chapter of *Frank-almoigne*, sect. 140.

A Man that holds Landes by Knights service, at this day grants them, by licence to an Abbot, &c. to hold in *Frank-almoigne*, the tenure reserved is voyde, and hee shall hold by Knights service, and so a gift in *Frankmarriage*, reserving a Rent, this reservation is voyde, and hee shall hold onely by fealty.

4. H. 6. 22. Otherwise it would be, if the reservation were good, for there the tacite reservation shall be silent, as in *Wheeler's case*. 6. Coke 6.

They agree, that if these Letters patents had beene made, by Bill signed by the kings owne hand, under the great Seale of England, the tenure reserved would controll the tenure, which the Law would have rayfed; For in Letters patents past in England, the Letters patents are *ultima intentio Regis*, and the Iudges (vwho are to make Construction thereof,) are to ground their judgement, upon the Letters patents themselves, and the contents thereof, without any regard to the particular, or any thing without the Letters patents, *Doddington's case*, 2. Coke. 34.

But in Letters patents of Lands in Ireland, under the great Seale of Ireland, the Letters patents are not *ultima intentio Regis*, but *tota, & sola, prima, & ultima intentio Regis* are all to be taken, and gathered out of the Commission, or vvarrant from the king under the privy Signet, upon vvhich they are passed; And here the Iudges are to ground their judgement upon the Commission, or vvarrant, as well as upon the Letters patents,

And to these seven Arguments, or reasons, all that was spoken by them, that argued for the Letters patents may be reduced.

But it was resolved by the two chiefe Iustices, the chiefe Baron, Baron Barry, and Iustice Ryves (vwith whom Baron Lowther agreed in opinion, though hee
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could not then argue, by reason of sicknesse.)

*That the Letters patents are voyde in law,
both to the Land, and to the tenure.*

*In this case five things did fall into
consideration.*

1. The *commission* mentioned in the Case, and the authority of it.
2. *Authorities*, and their severall sorts, and how they ought to be pursued.
3. The *Authority* in this case, what it is, if it be pursued, as it ought to bee? wherein it is not pursued.
4. *Tenures* what they are in the grant, that the reservation of a tenure is *modus concessionis*, that it is not *aliud*, or a distinct thing from the grant, that *tenures* had their originall in *England*, before the *Norman Conquest*.
5. The *reasons* why the Letters patents are voyde in the whole, and the *authorities* upon which the *Resolution* is grounded.

1. The *Commission* mentioned in the case, is the *commission* that was in force, in the time of his late *Maiesty*, for the strengthening of Defective Titles, a *Commission* that was one of the greatest graces, and bounties, that ever (before that time) was vouchsafed by the *kings* of *England* to their Subjects, of this *kingdome*; a *Commission*, that was agreed by all, to bee a good,
and

and legall, and effectuall *commission*, and to contrayne in it selfe full powver, and authority to grant.

Of which the *chiefe Iustice* of the *common pleas* in his argument sayd, that upon this occasion he did seriously peruse it, and in his judgement, it was as full, and strong a *Commission*, for granting the Landes, (*Concurrentibus hijs quæ de jure requiruntur*) as any hee had seene. There was in the *Commission* (as hee sayd) *plenitudo potestatis*, there is not any question of the *Commission*, nor of the power granted by the *Commission*; Neyther (as it was declared) was it the intention of his Maiesty, to deny unto the Subject, the full benefit of it in all things, wherein the *Commissioners* had pursued their authority, given by the *Commission*; and proceeded according to the law.

For that, that there was no direction in the *Commission* for the tenure, it was no defect in the *Commission* (as the *chiefe Baron* observed) nor any omission, or negligence in them, that were trusted with the drawing of it, it was done upon good aduise, & of purpose; for the cases of them, that were to passe upon that *Commission*, were so different, and there was such variety of tenures, that it was not possible, to give any certaine direction in the *Commission* concerning them.

Besides the intention of that *commission* was not, to give authoritie, for the alteration, or diminution of the *Kings* tenures; it was intended onely, for the establishing of the estates, and possessions of the Subject: And therefore there is not a word in it, of any tenure, so that the purpose of it was, where any former tenure

was *in esse*, to preserve it, and where no tenure was *in esse*, to leave it to the Reservation of the Law.

So that now the *Commission* being cleared, & agreed to be good, and legall, and to contayne full power, and ample authority to grant the Landes.

The sole *Question* vwill be, of the pursuance of the *Commission*, and whither this power granted by the *Commission*, bee well executed, and pursued by the Commissioners.

2. 2. To find out the law in this Case, the severall sorts of *authorities* in our Bookes were considered, and how they ought to be pursued.

For *authorities* these differences vvere agreed for Law.

All *authorities* are eyther *authorities* in law or *authorities* in fait 8. Coke. 146. the 6. *Carpenters case*.

Authorities in law are, vwhere the law gives *authoritie*, vvithout any *authoritie* from the party; as the law gives authority to the Lord, to distraine for his Rent, and service, to the ovvner of the soyle, to distraine damage feasant, to him in the reversion, to enter, and see if vvaſt be done, and the like.

An *authority* in fait, is where the authority is given by the party.

Authorities in fait are eyther { *Nude* and bare *authorities*,
or *authorities* cloathed vvith
an interest Cokes *instit.* 52.
Nude

Nude authorities are given eyther by

- 1. Deede.
- 2. Commission.
- 3. Patent.
- 4. Writ
- 5. or Act of parliament.

And for all those authorities, it is a certaine rule, and ground in our law, that they are to be pursued strictly, and precisely, both for matter, and forme, or otherwise, the act done, by colour of that authority is voyde. 10. H. 7. 15.

But the execution of authorities that are cloathed vvith an interest are of a more large, and favourable interpretation, then the execution of those, that are but bare authorities. 5. Coke. 94. & 95. in Barwickes case.

1. That authorities by Deede are to be pursued strictly, and precisely, both for matter, and manner. See the Case of 12. Ass. 24. 26. Ass. 39.

There the Case vvas, that the Plaintife did make a Charter of Fee-simple to the Tenant, and a letter of Atturney to deliver Livery of seisin, the Atturney delivers Livery upon condition, this Livery is voyde; for the authority is not pursued in the manner.

So on the contrary, if the letter of Atturney had beene, to deliver Livery of seisin upon condition, and the Atturney makes Livery vvithout condition, this is voyde. cokes instit. 258. 11. H. 4. 3. A letter of Atturney is made, to make Livery after the death of I. S. and

and the Atturney makes *Livery* during the life of *I.S.* all is voyde. 40. *afs.* 38.

If I command a Man, to make a Deede of feoffment in my name, according to a Copy shewen unto him, in Latine, if hee make a Deede of feoffment according to the effect of the same wordes, in *English*, or *French*, the Feoffment is without warrant, for in that case, *hee does not pursue the authority in the manner*, 10. *Henr.* 7. 9. So where an authority is given to enfeoffe, and he leavyes a Fine, *ibid.* & 10. *Henr.* 7. 15.

2. For authorities by Commission, that they must be pursued, it is the Earle of *Leicesters* case in *Plowd. com.* 380.

The Earle of *Leicester*, 1. *Mar.* was indicted of high treason, before Sir *Richard Southwell*, & seaven other Commissioners, by vertue of a Commission, directed to the sayd Sir *Richard* and fourteene more.

After another Commission was directed to Sir *Thomas White*, and others reciting that where the Earle of *Leicester* stood indicted, before Sir *Richard Southwell*, and fourteene other Commissioners, of divers Treasons, &c.

It gave them authority, *ad indictamentum predictum recipiendum*, & ipsum *Robertum* super inde audiendum, &c. ac debito fine triandum, terminandum, &c.

By colour of that Commission, they did arraigne him upon that indictment found before eight of the Commissioners, he confessed the treasons, &c. and had his judgement.

It

It was resolved, that all that was done was voyde; and coram non iudice, for that they did not pursue their authority.

3. Authority by Patent must be pursued.

The King licences an Abbot and Covent to Alien, the Abbot sole Aliens, it is voyde, 21. Henr. 7. 7. & 8. And the rule given by Frovricke, when the King makes any grant or Licence, it ought to bee executed accordingly, and strictly, as if the King grants me Licence, to make a feoffment by Deede, I cannot make a Feoffment without Deede; Nor e contra, So that the Licence must ever be pursued, or otherwise the act done, is not warranted by the Licence, vid. 18. ass. Pl. ultimo. The Lord Cliffords case 2. Coke. 80. Stamf. prerog. Regis 31.

The Licence was to levy a Fine of the Mannor of Dale, to find two Chapleines, and he would have levyed the fine, leaving out the Chapleines, and could not be suffered. 3. Ed. 3. 5. Stamf. ubi supra, vid. 30. Ed. 3. 17.

4. Authorities by Writ must bee pursued.

In a *præcipe quod reddat* there must bee two Summoners, therefore summons by one Summoner is not good, Plowd. Com. 393. 50. Ed. 3. 16.

5. Authority given by Parliament must bee pursued.

The

The Statute of Merton cap. 3. ordaynes, that in a Redisseisin, the Sheriffe *assumptis secum custodibus placitorum Coronæ, &c. accedat ad tenementum illud de quo facta fuerit querela.* If the Sheriffe take but one Coroner, it is not good, for the act appoints a number, two at the least, which number ought to be satisfied, or else the authority given by the Act is not pursued, 23. ass. 7. Plowd. Com. 393.

So that by the Rule of all these Books it is manifest, that a *Nude authority* must be pursued strictly, both for matter and manner, or the act done by colour of the authority is voyde.

But in what Cases, the Act so voyde for not pursuing of the authority, shall bee voyde in the whole, or in part onely, this difference was taken.

Where hee that hath an authority doth that which hee is authorized to doe, & *aliud*, and another thing distinct from that for which hee hath authority. And where hee doth the same thing which hee is authorized to doe *alio modo*, in another manner, then the authority does warrant.

In the first Case it is good, for that which is warranted, and voyde for the *aliud*. In the other it is voyde for the whole.

And therefore if a letter of Atturney be made to J. S. to make Livery of seisin in *White-acre*, and hee makes Livery in *White-acre*, and *Blacke-acre*, there hee doth *Idem* & *aliud*: And therefore it is good for *White-acre*, that is according to his authority, and pursuant

pursuant to it, and voyde for Black-acre, which is *Aliud* from his authoritie, Perk. 38.

Otherwise it would bee, if the letter of Attourney were to make *Livery* of one acre, and hee makes *Livery* of two acres, there it is voyde for both; because he couples both together; and it is not named in certaine in the feoffment, of vvhich Acre *Livery* shall be made; according to 4.H.7.5. But in the case of Perk: the Acre is named in certaine, *White-acre*, and so a difference.

On the other side, vvhhen the same thing is done in another manner than the authority vvarrants, there is *Idem alio modo*, and therefore all is voyde; As in the case of 12.Afs:24. 26.Afs:39. 40.Afs:38. 10.H.7.9. the cases already cited.

The true reason why in all those Cases the Act is voyde, is, because the Authoritie is executed *Alio Modo*, And so is the reason expressely given in the booke of 12.Aff. why the liverye is voyd, because the Attourney doth it in other manner, than the Authoritie warrants.

This is the difference that must rule the case one way or other.

And therefore the onely labour will be to find out under which part of that difference the case in question doth lye.

3. For that. First it will be necessary to enquire.

3.

What the authority in this Case is,
whether it be pursued as it ought to be?

D

Wherein

Wherein it is not pursued.

The *Authority* given to the *Commissioners* in this Case is twofold :

An *Authority* expressed in their *Commission*.
S. to grant the mannor of Dale.

And an *Authority* implied in law, to reserve a tenure in *Capite*.

For where there is no direction for the tenure, the law will imply a tenure in *Capite*, as the best for the King.

In this Case then by the very *commission*, the tenure is made a part of the grant, and *Modus concessionis*, for the *authority* though it bee twofold, expressed and implied, yet both being put together, that which is to bee done by vertue of that *Authority*, is but one entire Act, one grant, a grant of the *Mannor of Dale*, reserving a *capite tenure*, so that their *Authority* to grant the land is not absolute, but *sub modo*, so that they reserve a tenure in *Capite*; And although the power to reserve a tenure in *Capite*; bee onely implied by the law, and bee not given by expresse words in their *Commission*, that makes no difference :

For by the rule of our Bookes, *Authorities* implied in law, as well as those that are expressed, must be pursued.

Where a letter of *Attorney* is made to deliver *Livery of seisin*, the *Attorney* hath a twofold authority.

An authority expressed in his warrant, and that

that is generall to deliver seisin.

And an Authoritie implied in law, that is, to deliver an Actuell and expresse Livery, and not a Livery in Law.

And therefore if the Atturney delivers seisin within the view, though it bee varranted by his expresse authoritie, yet because he hath not pursued his implied authoritie, the Act is voyde. And so it was resolved, P. 3. Eliz. C. B. in *Yarhams Case*, *Cokes Instit.* sect. 66.

This then being their Authoritie. S. to grant the Mannor of Dale, and upon the grant to reserve a tenure in Capite.

Now how have they executed this authority?

There are Letters Patents passed to A. and his heires, by Colour of the Commission, to be holden by Knights service, as of his Majesties Castle of Dublin.

Here they have not pursued their Authoritie, for where by the Commission either a tenure in Capite ought to have beene reserved, or else the tenure left to the reservation of the law, They expressly reserve a tenure by Common Knights service.

That the Letters Patents as to this tenure (thus reserved) are voyde, it was agreed on all sides.

But whether they should bee onely voyde to the tenure, or whether the reserving of a tenure, so divers from the tenure intended, and warranted by the Commission, shall destroy the whole grant, both for the land and tenure, was the point, wherein they did differ.

4. And for the clearing of that they did enquire, what the reservation of a tenure is to the grant, Whither it be a part of the grant, And *Modus Concessionis*, or vvhither it be a distinct thing, and *Aliud* from the grant as this Case is.

For if (as they that argued for the Letters Patents held) the reservation of the tenure, and the grant of the land, bee *Aliud*, & *Aliud*, two distinct things in the Consideration of the vvhole grant made, and the authoritie given by the said Commission, for the making thereof, then peradventure the patent may be voyde, as to the tenure, and yet good for the grant of the land.

But if the reservation of the tenure be incident unto the authoritie, and included vwithin it; and the reservation of the tenure, and the grant of the land make up but one entire grant, so that the one is a part of the other, and the Reservation of the tenure bee *Modus Concessionis*, Then the granting of the land, reserving a diverse or contrary tenure, to that vvhich their Authority did warrant them to reserve, is a doing of *Idem alio modo*. And so the vvhole act is voyde.

They held that the Reservation of the tenure is *Modus Concessionis*, and that it is not *Aliud*. S. a thing distinct and separate from the authority of the grant of the land, but impliedly included within it, and incident to it.

Although a grant may be vwithout *Habendum*, expresse *Tenendum*, *Reddendum*, or Condition, yet when they

they, or any of them are added, they are *de modo concessione*, and doe direct, and rule the grant.

1. For the *Habendum*.

The proper office of the *Habendum* is to limit the estate;

yet sometimes it may

- 1. Alter the estate in the premises.
- 2. Diminish or enlarge.
- 3. Give to a stranger.
- 4. Make the grant voyde.

1. It may alter the estate in the premises.

As where land is given to two in the premises, *Habendum*, the one moytie to the one, and the other moytie to the other, by the premises they have a joynt estate, the *Habendum* makes them tenants in Common, Litt. 66. So where land is given to two, *Habendum* to the one for life, the remainder to the other. By the premises they should have a joynt estate in possession. But the *Habendum* doth alter that, and maketh the one sole tenant of the freehold for life, and the other sole tenant of the Remainder. 8. E. 3. 320. feoffments & faits. 73.

2. It enlarges or diminishes the estate that would passe by implication in the premises, and so destroyes the implication, This is common in every grant.

3. It

3. It gives to a stranger not named in the premises of the grant.

As if a man gives lands to I.S. *Habendum* with A. his daughter in *Frank-marriage*, there the wife not named in the premises, by the *Habendum*, takes a joynt estate with her husband. this Case is vouched in *Pl. Com.* 158. to be in 4. E. 3. which being not found in that yeare, it is there so left without any further reference, but you shall finde it in 5. E. 3. 17. so *Cokes Instit.* sect. 17. yet *vid.* 4. E. 3. 4. So likewise where a lease is made to A. *Habendum* for twenty yeares, the Remainder to B. and his heires, here B. gaineth an immediate freehold, by the *Habendum*, and yet he is not named in the premises of the deede. *Plowd. Comp.* 158.

4. It will make the grant voyde.

As if I have a Rent in Fee, and I grant it to another, if I stay there, the grant shall be for life, But if I say further, *Habendum* after the death of I.S. there all shall be voyde, *Plowd. Com.* 152. 156.

So if the King grants lands by letters patents, *Habendum* from a day to come, there the whole grant is made voyd by the *Habendum*. 5. *Coke*. 93. *Barwicks Case*.

He in the Reversion for life grants his estate, *Habendum* after *Michaelmas*, and after *Michaelmas* the tenant atturnes, yet Resolved that the grant is voyde, though if there had beene no *Habendum*, it had beene good by the premises of the deed, *Bucklers case*, 2. *Coke* 55.

In

In all these Cases, the *Habendum* being voyde, makes voyde the grants, which would have beene good without it.

As the *Habendum* hath these severall operations in the grant, so hath

2. the *Reddendum*.

As an estate by implication shall be controlled by an expresse limitation; so an implied Reservation shall be controlled by an expresse Reservation,

A man makes a lease rendring rent, and does not say to whom the rent shall be paid, this by implication shall be to the Lessor, and his heires, But if the words be to the Lessor, the heire shall not have it, 31.H. 8. Dyer.45. 12. E. 3. Ass.86. Plowd. com.171. in Hill and Granges case. 10. E.4. 18. & 21.H. 7.25.

The Reservation of a Rent in some Cases shall make severance of the grant, and make severall grants, and severall reversions.

As if a man makes a lease of three Mannors, reserving twenty shillings for one, five pound for another, and twenty pound for the third, there are severall Reversions, and there shall be severall Avowries, 14. Eliz. Dyer, 308. Winters Case. 9. E. 3. 12.5. Coke 55. Knights Case.

3. For the *Tenendum*.

The proper office of the *Tenendum* is to reserve the tenure, and to toll the tenure by implication.

Before the statute of *Quia Emptores terrarum*, If a man

man made a feoffment, the feoffee held of the feoffor by such services, as the feoffor held over; But if other services were Reserved, then the feoffee held by such services as were reserved.

That the Donee in taylor shall hold of the donor, as the donor held over, is Regularly true, if the donor make no speciall Reservation, for then the speciall Reservation excludes the tenure, which the Law would create. *Cokes Instit. sect. 19. vid. 34. H. 8. T. yer 52.*

4. For the condition.

That does likewise direct, and rule the grant, the Condition does change the qualitie of the grant, and makes the estate Conditionall, and defeasible, which otherwise would be absolute, and indefeasible:

So that all these, viz. the *Habendum*, the *Reddendum*, the *Tenendum*, and the Condition, are *de modo Concessionis*, and doe Rule, and direct the grant, the first limits, and sets forth the quantity, the other describe the quality of the estate.

And of all these the *Tenendum* is inseparably annexed to the estate, the rest may bee determined, and yet the estate continue, but the tenure cannot be determined, as long as the estate continues.

1. The Condition may be released.
2. The Rent may be released.
3. The estate may be enlarged.

But the tenure cannot bee destroyed, It may bee trans-

transferred from one to another, in Case of Common persons, But a Tenure in *Capite* cannot be transferred, or extinct by any release, or grant, for it is an incident inseparably annexed to the Crowne.

It was *Obj.* that the tenure is *Aliud* frō the land, for the *Obj.* land is the subjects, & the tenure belongs to the King.

To that, 1. it was *Ans.* that the *questiō* is not, whither *Resp.* the tenure be *Aliud* from the land, for tis cleare the land is one thing, and the tenure another: but the *questiō* is, whither the reservation of the tenure be *Aliud* frō the authority of granting the land, or included in it, as *modus concessionis*, S. they shal grant, & grant in this manner.

2 It was answered, both are the Kings, But the tenure was asleepe by the possession in the King, and it is now to bee awakened by this *Commission*, in which it appears, that the intent, and plaine meaning of the King was, to grant the land to the subject, and to reserve the tenure for himselfe. And that the Tenure is not such a stranger to the land, it is proved by our books, in *Mary Blages case*, 1. H. 4. 2. It is said, that land lies naturally in tenure. 2. that land lies alwayes in tenure, And therefore the tenure is of the nature of the land, it arises out of the land, and hath existence in the land, it is inherent in it, and inseparable from it, it is upon the matter of the essence of the grant of the land, for no grant of land in *Feesimple*, to a common person, either from the King, or a Common person, can be without a tenure, either expressed, or implied, We have not in our law properly *Allodium*, that is, any land in the hands of a subject, that is not holden, *Cokes Instit. sect. 1.*

The lands onely that are in the Kings possession are free from tenure, for a tenant is hee that holdeth

E

of

of some superior Lord, by some service, And therefore the King cannot be a tenant, because hee hath no superior, but God. *prædium domini Regis est directum dominium cuius nullus est Author nisi Deus.*

And as Bracton saith, lib. 1. cap. 8.

omnis quidem sub eo, & ipse sub nullo, nisi tantum sub Deo.

vid. lestatute. 16. R. 2. cap. 5. 14. Eliz. Dyer. 313. 1. Coke 47. vid. 8. Coke 118. where it is said, that it would bee against Common right and reason, that the King should hold of any, or doe service to any of his Subjects; and therefore some have thought it not so proper, in the Kings Case, to say, that he is seised in *dominico suo ut de feodo.* Cowell Interpret. *verb. feudum & institut. p. 66.* As if *feodum* or *feudum* were taken in our law as it is in the *feudall* law onely for lands held by services.

But with us it hath another signification, Littleton tels us, *feudum idem est quod hereditas*, and so it was defined, long before Littleton, by Bracton, and Briton, and Fleta.

And in truth it hath two significations in our bookes, In the first, it is taken to be the same with an inheritance, and so it is proper enough in the Kings Case.

In the other it is taken for lands held, as in that of *Hors de son fee.*

We finde both in Bracton lib. 4. cap. 9. fol. 263. *feudum est quod quis tenet ex quacunque causa sibi & heredibus suis, &c. & alio modo dicitur feudum, quod quis tenet ab alio sicut dicitur talis tenet de tali tot feuda per servitium militare.*

And

And agreeing with him is *Fleta* (which for the most part is transcribed out of *Bracton*) lib. 5. cap. 5.

And here just occasion might bee taken, to cleare our Master, *Littleton*, from that imputation which is cast upon him, by the Author of the *common wealth of England*, pag. 127. where hee layes ignorance to his charge, for saying, that *Feodum idem est quod hereditas*, which (saies he) it doth not signifie in any language.

It were easie to make it manifest, how proper that sence is, But because it hath partly appeared, by that which hath beene sayd, and for that the Author of that Booke is not knowne, for some have doubted, whither Sir *Thomas Smyth* be the Author of it, or no, Sir *Iohn Fernes* generositie, pag. 99. And so to argue with him, would be to fight with a shadow, therefore they did abstaine.

So that it is cleare, that onely lands in the Kings possession are free from tenure, But if they once come into the hands of a Common person, there if the feoffor doe not reserve a tenure, the law will.

Before the statute of *Quia Emptores Terrarum*, if a man made a feoffment in fee, and reserved no tenure, the law did imply a tenure, and the feoffee held of the feoffor, by such services as the feoffor held over,

Vpon a feoffment made after that statute, if no tenure were expressed, the law will imply a tenure *de Capitalibus dominis*.

And as it is in the Case of Common persons, so in the Kings Case, In every grant wherein feesimple passes, there must bee a tenure either expressed, or implied.

Of such Necessity is the Reservation of a tenure in the Kings grant, that although the King should grant land without any Reservation of tenure, or by expresse words *absque aliquo inde Reddendo*, yet the law would create a tenure in Capite 33. H. 6. 7. 6. Coke 7 Wybeblers Case. 9. Coke 123. Anthony Loves Case.

14. H. 6. 12. The Abbot of St. Bartholomewes Case. The King grants lands in fee, *Tenendum cy frankement come le Roy est en son Corone*, yet the patentee shall hold in capite, for it is vested in the King by his prerogative, and cannot be extinct,

It is so inseparable it cannot bee released. In Anthony Loves Case, The King grants, or releases the Services to his tenant, and his heires, this release cannot extinguish the tenure in all, though where the tenure is by Common Knights service, or socage, it extinguishes all the services, but that onely, which is an incident inseparable to every tenure, viz. fealty, And all for this reason, *Because there is a necessity of a tenure*, and the Kings Charter doth not alter the law; the tenure and services are part and parcell of the Mannor, and shall goe with the Mannor, and discend as the Mannor, to the heire of the part of the mother, although it bee newly created, 5. E. 2. Avovery 207.

Besides, consider the tenure in the Commencement, and fruits of it, it is ever inherent in, and Relative to the land.

The Commencement of the tenure. S. the forme of doing *homage* and *fealty* is, that hee shall be faithfull and true for the land that he holds.

The

The Case of Tenures. 33

The fruits of the tenure, what are they? but the profits of the land, wardship, Livery, primer seisin, reliefe, fine for Alienation, and the rest.

And therefore where the land and signiory meete in an equall estate, and right, in the same person, the signiory by unitie of possession is extinguished, And there are two reasons given of that extinguishment;

1. Because the signiory that was first extracted out of the land, when it comes to the land againe, it is naturally extinct, for it is *Revolutio ad materiam primam*.

2. Hee that hath all the profits entirely, cannot bee said to have part of the profits. Sir I. Davys rep. 5.

The Escheate which is the last resort of the tenure, is the land it selfe, and therefore the Reservation of the tenure cannot be said, to be a distinct thing from the grant of the land, as Black-acre from White-acre.

It was objected, that *Tenures in Capite* were brought in by the conquest, but grants were by the Common law, then if grants have beene ancienter then tenures, the tenure of Necessity must bee Alind from the thing granted. Obj.

To prove that this tenure was brought in by the Norman conquest, Selden was cited in his *Spicilegiu* to Eadmer. p. 194. vwhere he hath that out of *Bracton de Acquir. rerum domin. lib. 2.*

Forinsecum servitium dicitur Regale servitium quia spectat ad Dominum Regem, & non ad alium, & secundum quod in Conquestu fuit adinventum.

Resp.

It was answered that M. Selden in that place does barely recite the words of Bracton, not delivering any opinion of his owne:

For in that Booke cited, pag. 170. and in his titles of honour, the last edition, pag. 612. We find that hee was of another opinion, and that this tenure was in use in England, in the times of the Saxons.

What were those *Thani Majores*, or *Thani Regis* among the Saxons? but the Kings immediate tenants of lands, which they held by personall service, as of the Kings person by grand serjeanty, or Knights service in Capite.

The Land so held, was in those times called *Thainland*, as land holden in socage was called *Reveland*, so frequently in *Domes-Day*. *hec terra fuit terra Regis Edwardi Thainland, sed postea conversa est in Reveland.* Cokes Instit. sect. 117.

After some yeares that followed the comming of the Normans, the title of *Thane* grew out of use, and that of *Baron* and *Barony* succeeded for *Thane* and *Thainland*.

Whereby we may understand the true, and originall reason, of that which we have in the Lord Cromwells Case, 2. Coke 81. That every *Barony* of antient time was held by grand serjeanty; By that tenure were the *Thainlands* held in the time of the Saxons, and those *Thainlands* were the same that were after called *Baronies*.

'Tis true the possessions of Bishops and Abbots were first made subject to Knights service in capite by William the Conquerour, in the fourth yeare of his Raigne,

Raigne, for their lands were held in the times of the Saxons. *in pura & perpetua Eleemosyna*, free, *ab omni servitio seculari*.

But hee then turned their possessions into Baronies, and so made them *Barons* of the Kingdome, by tenure, so that as to them, this tenure, and service may be said to be *in Conquestu adinventum*. But the *Thainlands* were held by that tenure before,

As the Kings *Thane* was a tenant in *Capite*, so the *Thanus mediocris*, or middle *Thane* was onely a tenant by Knights service, that either held of a meane Lord, and not immediately of the King, or at least of the King as of an *Honour*, or *Mannor*, and not in *capite*.

What was that *Trinoda Neccessitas*, which so often occurs in the grants of the Saxon Kings, under this forme, *Exceptis istis tribus Expeditione, Arcis & pontis exstructione*? (See it in a Charter of King *Etheldred* in the preface to *Cokes 6. Report*, &c.) but that which was after expressed by *Salvo forinfeco servitio*. *Bracton. lib. 2. cap. 26. & 35. 12. Ed. 1. Gard. 152. 26. Ass. 66. Selden Analect. Anglobrit. 78.*

And therefore it was said that Sir *Henry Spelman* was mistaken, who in his *Glossary verbo feudum*, refers the originall of feuds in England, to the *Norman conquest*.

It is most manifest, that *Capite tenures*, tenures by *Knights service*, tenures in *socage*, *Frankalmoigne*, &c. were frequent in the times of the Saxons.

And if we will beleeve what is cited out of an old French Customary in a Mss. treatise of the *Antiquitie of tenures in England*, which is in many mens hands, all those

those tenures were in use long before the Saxons, even in the times of the Brittaines, there it is said; The first Brittish King divided Brittain into foure parts;

And gave one part to the *Arch-flamines* to pray for him, and his posteritie;

A second part he gave to his Earles and Nobilitie to doe him *Knights service*;

A third he divided among husbandmen, to hold of him in *socage*.

The fourth part he gave to Mechanicall persons, to hold in *Burgage*.

But that testimony was waiv'd, there being little certainty, or truth in the *Brittish Story* before the times of *Cesar*. Neither would they make use of that, which we are taught by *William Ro-ville of A-lenzon* in his preface to the *grand Customier of Normandy*, That all those *Customes* (among which these tenures are) were first brought into *Normandy* out of *England* by *Edward the Confessor*.

Besides that which hath beene said, wee finde *Feuds*, both the name, and thing in the *Lawes* of those times, among the *Lawes* of *Edward the Confessor*. cap. 35. vwhere it is thus provided.

Debent enim universi liberi homines, &c. secundum feodum suum, & secundum tenementa sua, Arma habere, & illa semper prompta conservare, ad tuitionem regni, & servitium dominorum suorum, &c. Lambard Archaionom. 135.

This Law was after confirmed by *William the Conquerour*, vid. *Cokes Instit. sect. 103.*

As these tenures were common in those times, so were

were all the fruits of them, *homage, fealty, Escuage, Reliefs, wardships.*

For Reliefs, we have full testimony in the Reliefs of their Barles, and Thanes, for which, See the Lawes of King Canutus, cap. 68. & 69. the Lawes of Edward the Confessor, cap. de Heterochijs, And what out of the booke of Domes-day, Coke hath in his Instit. sect. 103. Camden in Barke-shire, Selden in Edmer, 154.

That wardships were then in use, and not brought in by the Normans, as Camden in his Britt. 179. Nor by Hen. 3. as Randolph Higden in his Polichronicon, And others (not understanding him) would persuade, vid. Seldens Notes on Fortescue. 51.

Among the priviledges granted by Edward the Confessor to the Cinque-Ports, wee meete vvith this, that their heires shall not bee in ward, Lambards Perambulation of Kent. 101.

And in the Customes of Kent, which are in the Magna charta of Tottells Edition, and in Lambards perambulac. There is a rule for the vwardship of the heire in Gavell-kind, and that he shall not be married by the Lord. And those Customes say of themselves, that they were, *Devant le Conquest, e en le Conquest.*

For the Antiquity of wardships in England, and Scotland, see also Heet. Boet. lib. 11. Buchanan rerum Scot. lib. 6. and the Lawes of Malcolme 2. which prove the Antiquity of wardships in Scotland, and therefore in England, before the Norman Conquest; for in those times it is probable, the Lawes of both nations

did not much differ, As for the times after, it appears they did not, by comparing their *Regiam Majestatem*, and our *Glanvill*. Neither is the bare Conjecture of Sir Henry Spelman sufficient, to take avay the force of those Lawes, *vid. Spelman. Glossar. verbo Feudum.*

Vpon all this they did Conclude, That upon consideration of the Authority given, and grant thereupon made, the reservation of the tenure cannot bee said to bee *Aliud. S.* a separate and distinct thing from the Authority of granting the land, but rather included within it: And that the Reservation of the tenure, though it bee not *ipsa concessio*, the grant it selfe, yet it is *Modus concessionis*, and a part of the grant, And that therefore the Authority being not pursued in that, the whole grant is voyde.

5.

5. And so it was Resolved, for these reasons, and upon these Authorities.

1. The Maïne and principall reason, vvhy they did Resolve that the Letters patents vv ere voyde in the vvhole, was, because that here the Commissioners had but an Authoritie, and that Authoritie they have not pursued.

By the Commission they vv ere to grant the lands, and to reserve a tenure in Capite, or to leave the Reservation to the lawv; Nowv there is a tenure by common Knights service reserved, so they have executed their Authority in another manner, then the Commission vvarrants, they have done *Idem alio modo*, And there-

therefore by the rule of the bookes before cited, the vvhole grant is voyde.

It vvas agreed by all, that if the Commissioners here had granted the land, Reserving a tenure in *Capite*, the Patent vwould have beene good, and effectually, or if they had granted the land, and reserved no tenure, there because the Law in that Case vwould rayse a tenure in *Capite*, such a grant vwould have beene good, and well warranted by the Commission:

2. *This Commission is a Nude Authoritie*, for the interest is in the King, and the Commissioners have onely a bare Authority to grant, and therefore it ought to be pursued most strictly, both in *matter*, and *manner*, and the execution of it is to be expounded strictly.

This Answeres all the Cases that have beene put on the other side, where an Authoritie in some sort may be executed *alio modo*, and yet good, as the Case of *Stanton and Barnes*, where by Custome the Lord might grant *Copy-holds* in fee, and hee grants a Lesser estate simply, or a lesser estate vwith a remainder over, And the other Report, that hath beene cited betweene *Downes and Hopkins*, where the Custome was to grant copies for two lives, and he grants to the husband for life, and after to the wife *durante viduitate*; The Case of *Hatt and Arrowsmyth*, where a copy-holder for life was licensed to make a lease for yeares, *si tam diu vixerit*, and hee makes a lease absolutely, without that limitation. The Case of *Baron & Feme* making a lease upon the Statute of 32.H.8. The Case of 3.H.7. where upon a licence to grant an Annuity, he grants it with clause of *distresse*; And yet for that case, see

the Case of *Suttons Hospitall.* 10. Coke.

The Case of *Priddle and Napper*, and all the other Cases, that have beene put upon this ground.

For in all those Cases there is an interest coupled with the Authority, and therefore they are not to bee compared to this Case, in which there is only a meere and a bare Authority.

3. *This Commission is a publique authority of Record*, to which the subjects may resort, and of which they ought to take Notice, to passe according the Commission at their perill. And therefore if either through ignorance, or Carelesnesse, or otherwise they neglect to have their patents drawne pursuant to the Commission, the fault is their owne, they cannot transerre the blame of this to the King, as in like Case it is resolved, upon the Commission of Bankrupts 2. Coke 26. So at the common Law, a patent without recitall of a lease for yeares of Record, is voyde, for the subject may resort to the publique Record; The King intends *Ardua Regni*,

This answeres the objection, touching even that honour of the King, that hath beene spoken of, and cleares his performance of his part in this Case.

For the King in favour of his Subjects of this Realme, hath granted a good, and gracious, and effectuall Commission, upon which many legall, and good, and effectuall Letters Patents have beene made, that have beene allowed, and approved for good.

But if upon this Commission, so good, and gracious for the subject, the subject shall contrary to the authoritie given by the Commission obtaine Letters patents,
in

in fraud, and deceit of the Crowne, to defeat the King of his *tenures* in *Capite*, a principall flowre of his Crowne, if these *Letters patents* bee voide, where's the fault? certainly in the subiect, that contrary to the Authoritie of the *Commission*, obtaines this grant in deceit of the King, to defeat him of his tenure, which vvas but an ill returne for so great and gracious a bountie; And that *Objection* of the operation of law, Answeres not the intention of the partie in this case, for plainly, and apparently, the meaning of the *Patentee* vvas, to suppressse the King's tenure in *Capite*, and to hold by a meane, and inferiour tenure, which was contrary to the authoritie of the *Commission*, and in deceit, and prejudice of the King.

Now that *Patents* obtained in deceit, and prejudice of the King, are clearely, and wholly, and utterly voyde, to all intents, and purposes, is a ground so obvious, so positive, and infallibly true, that they would not cite any booke, or authoritie to prove it, for it is marvellous cleare, and granted of all sides, that patents obtayned in deceit, and prejudice of the King, are altogether voyde,

If any desire an Authoritie, he may have a Cloud of Authorities, in the Case of *Alton Woods*. Coke. 1. Report.

4. This is an Authoritie appearing within the body of the Record, of the *Letters Patents* themselves; for the *Letters Patents* are ex *Assensu* of such and such commissioners, *virtute & secundum intentionem Commissionis*, &c.

Now the tenure in *Capite* being as strongly implied
in

in the *Commission*, as if it had beene expressed; (as it hath beene confessed of the other part) for it is upon this *implication*, that they say the *Patent* is voyde for the tenure, it is as much, as if the *King* had given *Commission* to grant the land, to hold in *capite*, and not otherwise.

Now in so much as the *commissioners* have granted the lands, in *other Manner* (and all this appeares within the body of the *Record* of the letters patents themselves) the *patent* is voyde in the *whole*, for *Construction* is to bee made upon the whole patent, and not upon any part of it distinct, as it is Resolved in *Bucklers case. 2 Coke 55.* L

And this hitherto hath beene alwayes the constant Resolution of all the *Judges of Ireland*, our Predecessors, That if upon Letters of *warrant*, or *commission*, *Letters Patents* be made varying in any point materiall, from the *warrant*, or *Commission*, (and all this appeares within the body of the *Letters patents* themselves) that the *Letters patents* are all utterly voyde, And this hath beene ever agreed upon by reason of the difference betweene the manner of passing of *Letters patents* in *England*, and *Ireland*.

But where the *warrant*, or *Commission*, and the variance doe not appeare within the *Letters patents*, how it shall be ayded for the *King*, by *Averment*, or otherwise hath beene some doubt, and *Question*.

5. *Although that it be true, that this Commission is of a vast, and large extent, yet it is not boundlesse, for the law alwayes bounds, and circumscribes these ample Authorities with reasonable, and equall constructions, without prejudice*

to others, as it was resolved upon the Commission of Sewers, upon which we have the Reported Cases in 5. coke 99. *Rookes Case*, & 10. coke 138.

This Commission of Sewers gives power, and Authoritie to the Commissioners, To proceede according to their wisedomes, and discretions, which is a most ample power, yet the law does bound, and circumscribe it with an equall Construction. S. that their proceedings ought to bee bounded with the rules of Reason, Law, and Justice, and that their taxes be equall, and that all persons that bee subject to the danger, or receive benefit by the Reparation, be contributory to a ratable, and equall contribution of the charge, And if they doe otherwise, their ordinances are voyde, and they cannot make new inventions, as Artificiall Mills for casting out of water, &c.

For these generall Commissions are all accompanied in law with an equall and reasonable construction for the execution of them.

So this Commission is a most ample, and large Commission, for the securing of the estates of the subjects, in their lands, but yet it ought to bee so executed, according to law, reason, and justice, that they doe not prejudice the King in his tenures, contrary to their warrant.

6. *Because that this Reservation of a meane tenure, is in other manner than the Authority warrants, and to the damage and prejudice of the King.*

If the Commission were, to grant an estate for life, and they grant an estate *tail*, or if the Commission were to grant in *tail*, and they grant in Fee, All the
patent

patent is voyde, because they doe it in *other manner* then the authoritie warrants, for the *Habendum* is *Modus Concessionis*.

If they reserve another Rent, then is varranted by the Commission, or parcell an entire rent, where the rent in charge ought to bee reserved, although that it bee severall upon the survey, yet the whole patent is voyde, because that they doe it in *other manner* then the Authoritie warrants, for the *Reddendum* is *Modus Concessionis*.

Why then shall it not bee the same reason, in this Case, for here they reserve another *tenure*, then that vvhich is varranted by the Commission, and therefore they have executed their authority in *other manner* then their Authoritie warrants, for the *Tenendum* also is *Modus Concessionis*.

It was granted by them that argued on the other side, that if it bee prejudiciall to the King, the whole Patent shall be voyde.

Now it is most apparant, that this implied tenure (if it be admitted) will bee greatly prejudiciall to the King, for the King shall loose his tenure, and the fruite of his tenure, in most Cases for ever, and in all Cases for a long time; and neither the *Master*, nor the *Attorney* of the Court of *Wards* can helpe it.

And for that, the course of Patents here in *Ireland* was observed.

First, the *Commissioners* give warrant for drawing of the Patent, and the reservation of this meane tenure, the *Kings* Councell draw the Patent accordingly, and

so

so it passes the signature of the Lord Deputy, the privy signet; and the great seale, then it is enrolled in the Chancery, All this vvhyle it is taken according to the tenure expressed in the patent, vvhen it is enrolled, it is transcribed into the Exchequer, and the transcript delivered into the Exchequer by the master of the Rolls, the Lord Chiefe Baron receives it, and delivers it to the second Remembrancer, and he puts it in charge according to the tenure expressed, the Escheator, and Feodary informe themselves of the Kings tenures there, vvhere if they make enquiry, the patent is produced, in vvhich an expresse tenure is reserved, they cannot judge the contrary, and so it passes according to the expresse tenure; And so have the Letters patents nowv in question passed, and the King by colour of them, hath lost the profits of the Land, and the benefit of the tenure.

7. The expresse reservation in the Letters patents excludes the reservation, and implication of Law, Although (as in the case in question) it tend to make voyde the whole grant, it is a sure rule in Law, *expressum facit cessare tacitum*. If the King vpon his Letters patents reserve no tenure, it shall be a capite tenure, but if another tenure be expressed, that shall prevayle; 33. H.6. 7. per prius.

In *Wheeler's Case*. 6. Coke. 6. Where in a patent the vvordes of the Tenendum vvere, *Tenendum de nobis per servitium unius Rose, pro omnibus servitijs*.

It vvvas objected, that the tenure as it is expressed cannot stand, for that no tenure can bee vvithout fealty, and the vvordes are *per servitium unius Rose, pro omnibus servitijs*.

2. It vvas objected, that in Case vvhether no tenure is Reserved, or in Case vvhether it is expresse to be *absque aliquo inde Reddendo*, the tenure shall be *Knights service in Capite*.

And therefore it vvas urged, that the tenure in the principall Case, must needs be a *Capite tenure by Knights service*, and that the tenure expresse, should be voyde, and give place to the better tenure for the King.

These are strong objections, yet Resolved, in respect of that favour that is given to expresse Reservations, that in the said Case, *fealty* (that is an incident to all services) shall be admitted to stand vvith the vvordes, and then the tenure expresse reserved vvas so compleate that it might vvell exclude the *Knights service* tenure, vvvhich othervvise the Law vvould have implied.

Hereby may appeare the favour that is given to expresse Reservations, and tenures, that thereby a tenure in *capite* by *Knights service* shall be excluded, a tenure vvvhich shall arise vvhere nothing is Reserved, vvvhich shall arise though the vvordes bee, *absque aliquo inde reddendo*. vid. *S^r Iohn Molins case. 6. Coke 5.*

It is agreed on the other side, that vvhere the expresse tenure is good, there it controlls the implied tenure, but in our Case it is voyd.

And vvhere a tenure expresse is voyde, a tenure by implication of Law may arise.

But it vvas Resolved; that although the expresse tenure bee voyde, yet no tenure by Implication of Law, shall arise against the expresse Reservation, And so in the Case of a
voyde

voyde *Habendum*, vvvhich stands vpon the same reason, It vvvas adjudged in B. R. Betweene one *Hegge* and *Crosse*, 33 et 34. *Eliz.* vvvhich you may see in *Bucklers case*, 1. *Coke*. 55. Where the Case vvvas.

Tenant for life makes a lease for yeares, and after grants the reversion to *A. Habendum* from a day to come for life, after the day the lessee for yeares attorns, in that Case the *Habendum* is voyde, yet that voyde *Habendum* makes voyde the vvvhole grant, and excludes the implication of *Lavv* in the premisses, and no estate shall passe by implication of *Lavv* in the premisses, against the expresse limitation of the party in the *Habendum*: see the Cases cited before p. 26.

So our *Tenendum* although it be voyde, yet the expresse reservation in the *Tenendum* shall exclude the implication of *Lavv*.

For that opinion of *Martyn*. in 4. *H. 6. 22.* that vvvas Cited on the other part, that if land be given in *frank-marriage*, reserving a rent, the reservation of the rent is voyde, by reason of the implied tenure in *frankmarriage*; that opinion (as vvvas said) may vvvell be doubted of, for vvvee find as good Authority against it, in the old *Tenures* fol. 211; That the Reservation of the rent is good, and destroys the *frank-marriage*, and makes it a Common *Estate* taylor: But the best opinion is, that both of them shall stand together, S. the gift in *frankmarriage*, and also the Reservation of the rent, S. that the donee in *frankmarriage* shall hold quit of the rent, untill the fourth degree be past, and then the rent shall take effect, and so vvvas the opinion of the Iudges, in *VWebb* and *Potters Case* in 24. *Eliz.* and so are the

bookes to be understood; 13.E.1. *formiedon.* 63. 31.E.1. *taile* 31. 26.E.3. *grants.* 75. et 26. *Aff.* 66.

For the *Case of Littleton* 140. A man seised of certaine tenements, vvhich he held of his Lord by *Knights service*, at this day grants by license the same tenements to an *Abbot*, in *frankalmoigne*, the *Abbot* shall hold immediately by *Knights service*, of the same Lord, of vvhom his grantor held, and shall not hold of his grantor in *frankalmoigne*.

In that Case (they say) the expresse tenure being voyde, a tenure by implication of Law does arise.

It vvas *Answered*, there is a difference betweene the Kings Case, vvhich is the Case in question, and the Case of a Common person.

For the grants of a Common person, the rule of Law is, that the grant shall be taken most strongly against the grantor.

For the Kings grants the rule is, that they shall be taken most beneficially for the King, and most strong against the patentees.

And vvee have another rule, that the grant of the King shall not be extended to passe any thing, contrary to the intent of the King expressed in his grant, And if the grant cannot take effect, according to his intent expressed in his grant, the grant is voyde.

And therefore, for the rules put by them that argued on the other side, that the patents of the King shall be taken in such sence and to such intent that they shall be good, &c.

It may be *Answered*, that there is another ground in our Law, that when the King is deceived in his grant, so
that

that it cannot take effect, according to his intent expressed in his grant, the grant is voyde, so the best exposition is, to make all these rules to agree together.

And therefore the rules put on the other side, are true vvith this limitation. S. Except the King be deceived, so that his grant cannot take such effect, as he intends by his expresse grant.

In the Lord Lovells case. 18. H. 8. B. Pat. 104. The King ex certa scientia, et mero motu grants lands to one, and to his heires males; if a Common person had made such a grant, the Law vvould say, that the vvord males vvere voyde, and the fee simple should passe; But vvill the Law make such a construction in the Kings grant? No, there the grant shall be voyde, for he vvvas deceived in his grant, in that it cannot take effect according to his intent expressed in his letters patents.

And so in the Case of 7. H. 4. 42. & 21. E. 3. 47. The Earle of Kents case, If the King hath a vvard of land, or a lease of land for yeares, and by his letters patents grants the land to another and his heires, the grant is voyde, and it shall not amount by construction, to a grant of his estate, or interest. vid. 21. Aff. 15. And the other bookes Cited in the Case of Alton vvoods upon this ground.

29 Eliz. in the Exchequer, the Case vvvas; King H. 7. vvvas seised of two mannors. S. de Ryton et condor, he grants ex certa scientia et mero motu totum illud manerium de Ryton et condor, adjudged that the grant vvvas voyde.

The like Case vvvas resolved 39. Eliz. vvhere the queene vvvas seised of the Mannors of Millborne and Saperton in the County of Lincolne, and the queene grants

grants *ex certa scientia*, & *mero motu*, totum illud Manerium de Millborne, cum Saperton in com: Linc: and it was held that neither of the Mannors did passe; And yet if a Common person had made such grants; the grantee in both the said Cases should have had both the Mannors.

So in our Case, the King is deceived in his grant, in that his grant cannot take effect, according to his intention therein expressed, For the Kings intention is to make a grant agreeable in all things, to the Authority given to the Commissioners, by the layd Commission;

And that appeares plainly by the very words of the letters patents, for the words are, *Sciatis quod nos &c. virtute ac secundum intentionem et effectum* of the said Commission, *Dedimus et Concessimus &c.* as in the patent; and he conceived that the warrant made by the Commissioners, for passing the patent (which here we call the *fiant*) had bene according to the intent, and effect of the said Commission: And upon that warrant which exceeded the Authority given to the commissioners, this patent was past, yet still with a reference to the intention and effect of the Commission.

Now this grant cannot by any possibility take effect according to the Kings intention therein expressed, for the Kings intention in the beginning of the grant is, that it shall be according to the intention, and effect of the Commission, which must be a tenure by *Knights service in capite*, either by expresse Reservation, or by implication, and operation of Law.

And

And the tenure reserved in the patent, is a tenure by *Common Knights service*, as of the *Castle of Dublyn*, differing altogether from the intention, and effect of the Commission, so as it is not possible, that this tenure expressly reserved can be according to the intention and effect of the Commission, or that the intent and effect of the Commission can any wayes accord with the tenure expressly reserved in the patent.

So as it is very plaine and manifest that the King is deceived in this grant, and that it cannot take effect according to his intention therein expressed.

For the *Authorities* on vvhich their Resolution vvas grounded.

The principall Case vvas that of 12. *Aff. 24.* vvhich (as it vvas sayd) vvas a *Iudgement* in effect in the point, A *Iudgement* in a tyme, vvhhen the *Law* vvas as flourishing, and the *Iudges* as learned, as in any tyme either before, or since, A *Iudgement* approoved in all ages subsequent, 26. *Aff. 39. 11. H. 43. &c.* And no *Authority* in all our bookes against it, for the materiall Cases that have bene put on the other side, are of *Authorities* accoupled vvith an Interest, and by Consequence doe not come to the point in question.

And vvee see that the *Authority* of this *Iudgement* is so great, and cleare, that it is confessed by them that argued on the other part; But the reason of the *Iudgement* given by the *Iudge*, that gives the *Iudgement* is denied. *S. pur ceo que il fait ceo en auter manner*, and a newv reason is invented, *S. because he does not pursue his Authority.*

Heere vvee finde them put to a straight; *S. to Confesse*

fesse the Iudgement, and denye the reason, for vvho better knew the reason of the Iudgement, then the Iudge that gave it, This new reason. S. That he hath not pursued his Authority if it be examined, vvill come to the first reason, for if it be demaunded, why he hath not pursued his authority, it must be Answered, *pur ceo que il ad fait ceo en auter manner que le authority soy garant*, vvwhich is the reason of 12. Ass.

But vvee have other Authorities in the point, upon the same reason, that of 10. H. 7. 15. vvwhich hath bene remembred, per Keble the most Learned Lawyer of that tyme, *quant home ad authority de faire ascun fait a un auter, il doit pursuer son authority, en matter, et en forme*, there is *Modus concessionis*, and by the Case that he there puts, if he does it in other forme, *alio modo* it is voyde.

If I enfeoffe a man, to enfeoffe another, and hee leavies a fine, this is voyde, yet the matter in substance is the same, for a fyne is but a feoffment of Record, but because that hee hath done it in other manner, all is voyde.

11. H. 7. 13. A letter of Atturney to make liverie to I. S. or I. N. and the Atturney makes livery to both, the livery is voyde in all, and it is not good as to the one, and voyde as to the other, but voyde in the vvhole, because that he hath done it in other manner, then the authority warrants.

8. Cooke. 85. In Sir Richard Pexhalls case, If the King licenses his Tenant, to alien tvvo parts of his Mannor of Dale, vvwhich is held in capite, and he aliens all the mannor, it is voyde in the vvhole, and it is not good
for

for two parts, and voyde for the third, And the reason is, because he doth it in other manuer then the license warrants. vid. 10. H. 7. 13. 38. H. 8. Dyer. 62. 40. Aff. 38. 10. H. 7. 15.

There vvas a Report cited by the chiefe Iustice of the Common pleas, and the chiefe Baron, the Case vvas in C. B. in England T. M. 2. Caroli. Betweene George Bishop of chichester plaintiffe, and Iohn Freeman defendant. Intr. Pasch. 1. Caroli. Rot. 207. And the case vvas this.

The Bishop of chichester vvas seised in fee, (in the right of his Bishoprick,) of Allingburne parke, in the County of Suffex, and he, and his predecessors have anciently granted the office of Keeper of this parke for life, vvith the fee of five markes.

Anthony Bishop of chichester, 2. February. 44. Eliz. by his deece granted the Office of Keeper of the parke to one Freeman for life, *Et ulterius concessit pro executione officij predicti* the ancient fee of five markes, *vna cum* a livery Coate, or thirteene shillings foure pence for it, *Nec non pasturam pro duobus equis; vna cum* the vvindfalls, vvwhich grant vvas confirmed by the Deane, and Chapter.

And vvwhether this grant vvas good against the successor, or voyde, upon the statute of Anno 1. Eliz. Cap. 25, vvas the question.

In vvwhich the doubt vvas, vvwhether this Addition of a livery Coate, pasturage, and vvindfalls vvill make the vvhole grant utterly voyde; or if the Law shall make such a construction, that for this addition it shall be onely voyde, and shall stand good for the other; vvwhich vvas the ancient fee, and vvell granted.

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And

And by Iustice Crooke, and Harvy, against Yelverton, the grant is voyde in the whole, because, that the Bishop hath not pursued the Authority given him by the statute, by reason of this expresse, and new addition, and yet they professe, that they had rather have given opinion for the defendant, for that he was a poore man, and an ancient servant to the Bishop; and yet in this Case, the Addition, and new Augmentation is a severall, and distinct clause in the grant, and the things added *de novo*, are also severall, and distinct in specie from the ancient Fee of five Markes.

And in the argument of this Case, Iustice Crooke cited a farre stronger Case to be adjudged in the case of the Archbishop of Canterbury. 43. Eliz. And the Case was this.

Parker Archbishop of Canterbury granted the office of surveyorship, with the ancient fee to one Parker, *Et ulterius* he granted unto him *pasturam pro duobus equis* in the parke, and the whole grant was adjudged voyde, and yet here was a severall grant, by a severall, and distinct clause, and of another thing, severall, and distinct in specie, *Aliud et Aliud*.

And these Cases are farre stronger then the Case in question, for here there is not a bare Authority, but an interest accoupled with an authority.

And in this Case Iustice Crooke cited Scamblers Case, 41. Eliz. to be adjudged, that the vvhole grant was voyde, and not good as to the man of full age, and voyde as to the Infant, as it hath bene cited by some that argued on the other side.

And

The Case of Tenures.

55

And so upon the whole matter they did resolve.

1. That the Commissioners by this Commission have a good, and legall, and sufficient power, and authority to grant.

1.

2. That all Letters Patents made upon this Commission, in which they have pursued their authority, are good and effectually in Law. S. Where they have either reserved an expresse tenure by Knights service in Capite, or no tenure, for there the Law implies a tenure in Capite.

2.

3. But where the Commissioners reserve a meane tenure, the whole patent is voyde.

3.

1. Because, that the Commissioners have but an Authority.

2. Because, that this is but a Nude Authority, and not accoupled with any Interest.

3. Because, it is a publique Authority of Record, whereof the subjects ought to take notice, to passe according at their perill, otherwise the patent shall be in deceit of the King.

4. Because, that the Authority appeares within the letters patents themselves, and exposition shall be made upon the whole patent.

5. Although it be a most ample and large Commission, yet it is bounded, and circumscribed by the Law, with an equall Construction. S. that

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nothing

nothing shall bee done in other manner then the Authority warrants in prejudice of the King.

6. Because that this reservation of a meane tenure, is in other manner then the authority warrants, and is in damage and prejudice of the King.

7. And lastly because that this expresse reservation contrrolls the implication of Law: and for that the King was deceived in his grant, in that it cannot take effect according to his intention therein expressed.

For these Reasons they did resolve.

**That this expresse Reservation of a meane tenure
tends to the destruction of the whole patent,
and makes it voyde in Law both to
the lands and to the
tenure.**

**The Order of the Councell Board
upon this Resolution
of the Iudges.**

By the Lord Deputy and
Councell.

WENTWORTH.



*Hereas there was an Act of
Councell made at this Board,
and dated at the Abbey of Boyle,
the Eleaventh day of Iuly 1635.
ordayning, and establisshing, that the Lords,
Knights, Gentlemen, and Inhabitants, their
heires, and assignes holding any Castles, Man-
nors, Lands, Tenements, or other heredita-
ments in the County of Roscoman, by or un-
der any effectuall letters patents from his
Majesty, or any of his Royall predecessors
Kings, or Queenes of England, should
have, hold, possesse, and enjoy all the said Castles,
Mannors, Lands, Tenements, and heredita-
ments of what kinde, or nature soever they be,
to them, and to every of them, and to those, who
hold any estates under them, against his Ma-
jesty, his heires, and successors, in as full, large,
ample, free, and beneficiall manner to all in-
tents, purposes, and constructions, as if the truth
of their severall Cases, and their severall letters
patents passed thereupon, had bene specially
found*

found in the great office then to be taken, for
finding his Majesties title to the said County,
and their letters patents accordingly entred,
in hæc verba, in the said office, so that they did
produce their said severall letters patents, &
the enrollments thereof, before us the Lord
Deputy, and Councell, at this Board, be-
fore the first day of the then next Easter
Term, and that no possession should be taken
from any such patentees, or their assignes, or
tenants, whose patents should be at this Board
allowed to be good, and effectuell in Law: And
whereas the like Acts of Councell were made
at this Board, for the severall Counties of
Slygo, Mayo, and Gallway, and the County
of the towne of Gallway; And whereas
severall letters patents past under his Ma-
jesty's great seale, of divers lands, tenements,
and hereditaments in the said severall Counties,
by colour of a Commission under the greates
Seale, dated the second day of March, in the
fourth yeare of the Raigne of his Majesty's
Royall Father King James, of blessed memo-
ry, were presented unto us at this Board, which
being taken into consideration by us, we thought
fit

*fit for our better Information of the validity of
the said letters patents, to call before us some
of those who claymed by those letters patents,
as namely, our very good Lord the Viscount
Dillon of Costillogallen, whom wee appoin-
ted to attend us with his learned Councell
therein, which he did accordingly; Whereupon
his Majestyes learned Councell, and the
Councell learned of the said Lord Dillon,
agreed upon a Case drawn up by them, to be
argued by them on both sides before us, which
Case followeth in hæc verba, King Iames by
Commission under the greate Seale, da-
ted the second day of March, in the fourth
yeare of his Raigne, did authorize cer-
taine Commissioners, to grant the man-
nor of Dale, by letters patents under the
greate Seale of this Kingdome, to A. and
his heires, and there is no direction given
in the said Commission, touching the te-
nure to be reserved; There are letters pa-
tents by colour of the said Commission
passed unto A. and his heires, to hold by
Knights service, that is to say by the
twentieth parte of &c. as of his Majestyes
Castle*

Castle of Dublyn, the question is, whether the said letters patents be voyde in the whole, or onely to the tenure, upon which case his Majesties learned Councell, and the learned Councell on the part of the said Viscount Dillon argued before us, severall dayes, and wee (desirous to take such a Resolution in the matter as might be equall and just) held fit to advise therein withall his Majesties Iudges, who not agreeing unanimously in opinion, wee adjudged it fit, that every of them should argue it, and deliver his Iudgement, and opinion therein, before us, which they did accordingly. Wherein five of them, viz. the Lord Chiefe Iustice of his Majesties Court of Kings Bench, the Lord Chiefe Iustice of his Majesties Court of common pleas, the Lo: Chiefe Baron of his Majesties Court of Exchequer, Baron Barry, and Iustice Rives concurred in opinion clearely, that the letters patents were voyde in the whole, and two onely, viz. Iustice Mayart, and Iustice Cressy differed from those five in opinion, holding that the letters patents were onely voyde, as to the tenure; we thereupon
I taking

taking the same into consideration at this Board, doe hereby adjudge, order, and declare, that the said letters patents are wholly voyde in Law; and consequently that all such letters patents passed under colour of the said Commission, and that mention the parcells granted to be held by Knights service, as of his Majestyes Castle of Dublyn, or by any tenure other then by Knights service in Capite generally, are not good, effectuell, or valid in Law, but voyde in the whole; And therefore we doe at this Board disallowe all such letters patents soe granted; as aforesaid, of any lands, tenements, or hereditaments in any of the said Counties of Roscoman, Slygo, Mayo, Gallway, or the county of the towne of Gallway. Given at his Majestyes Castle of Dublyn. 13. Iuly. 1637.

R. Dillon. Ad. Loftus. W. Parsons.
Gerr. Lowther. R. Bolton.
Chr. Vandesford. Ph. Mainwaring.
Cha. Coote. Geo. Radcliffe.

THE END.

